

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAN NYGREN,

Plaintiff,

v.

AT&T WIRELESS SERVICES, INC., et
al.,

Defendants.

CASE NO. C03-3928JLR

ORDER

I. INTRODUCTION

The court has received Defendants' motion for reconsideration of the court's order dated April 21, 2005. (Dkt. # 62). The court has reviewed the motion and DENIES it to the extent it requests reconsideration of the court's order.

Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Defendants' motion does not meet either standard.

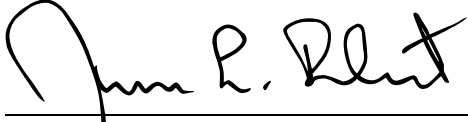
The remainder of this order clarifies the court's prior order to address the issues Defendants have raised in their motion. First, it appears undisputed that Plaintiff withdrew his claim for negligent hiring, and thus that cause of action is no longer at issue.

1 Second, the court is mindful of Washington authority barring a cause of action for
2 negligent infliction of emotional distress arising from workplace disputes or the
3 imposition of discipline on employees. See Snyder v. Med. Serv. Corp., 35 P.3d 1158,
4 1163-65 (Wash. 2001). This authority does not, however, foreclose all negligent
5 infliction of emotional distress claims arising from workplace conduct. The court's prior
6 order recognized that Plaintiff's evidence, taken in the light most favorable to him,
7 supports a claim based on conduct that is neither part of a workplace dispute nor the
8 imposition of discipline. A jury must decide if Defendant Brown's alleged favoritism
9 toward Ms. Earls is outside the bounds of a workplace dispute or the imposition of
10 discipline.
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12 Finally, Defendants misconstrue Washington law that bars negligence claims that
13 are duplicative of claims for workplace discrimination. Defendants cite Haubry v. Snow,
14 31 P.3d 1186 (Wash. 2001), and Francom v. Costco Wholesale Corp., 991 P.2d 1182
15 (Wash. 2000), for the proposition that if a plaintiff pleads negligence claims based on the
16 same conduct underlying a claim of discrimination, a court must dismiss the negligence
17 claims. Neither Haubry nor Francom supports that proposition. Instead, they establish
18 that a plaintiff cannot win "double recovery" under discrimination and negligence
19 theories. Francom, 991 P.2d at 1192. The cases explicitly recognize that non-
20 discriminatory conduct can form the basis of a negligence claim. Id. ("[W]hen a plaintiff
21 alleges that non-discriminatory conduct caused separate emotional injuries, he or she may
22 maintain a separate claim for negligent infliction of emotional distress."). Here, Plaintiff
23 mistakenly believed that his allegations made out a claim of discrimination. The court
24 disposed of the discrimination claims. There is thus no danger of a double recovery, and
25 no basis for summary judgment.
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1 For the foregoing reasons, the court DENIES Defendants' motion for
2 reconsideration. (Dkt. # 62).

3 Dated this 16th day of May, 2005.
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7 JAMES L. ROBART
8 United States District Judge
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